Federal Court  Cour fédérale

Date: 20240305

Docket: IMM-9734-22

Citation: 2024 FC 364

Ottawa, Ontario, March 5, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

SIEW LENG GOH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the "Decision") of an Immigration Officer (the "Officer"), dated October 4, 2022. The Decision refused the application of Ms. Siew Leng Goh (the "Applicant") for an exemption from the in-Canada permanent residence selection criteria on humanitarian and compassionate ("H&C") grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicant alleges that the Decision is unreasonable. She requests that this Court quash the Decision and remit the matter for re-determination.

II. Background

[3] The Applicant is a citizen of Malaysia. She is 79 years old. She was 78 at the date of the Decision.

[4] The Applicant claims she had a child in the United States in 1976 while unmarried. This caused her to experience “great emotional distress”. The Applicant subsequently entered Canada in 1983 to live with her aunt and her aunt’s family. She has resided in Canada since.

[5] The Applicant acknowledges that she has never had status in Canada and has not worked since first entering the country. She is seeking permanent residency on humanitarian and compassionate grounds to regularize her status here and remain close to her aunt’s family.

[6] The Applicant alleges that her aunt and her aunt’s seven children (the Applicant’s cousins) and 15 grandchildren in Canada have been the only family she has known for decades. They are the only family members willing to help her since she entered Canada in 1983. She has been reliant on her aunt financially since coming to Canada, and five of her seven cousins have submitted letters supporting the Applicant’s application. The Applicant has no family in Malaysia, and by all accounts, she and her daughter are estranged.

[7] In support of her application for an exemption under subsection 25(1) of the *IRPA*, the Applicant included the following relevant documents:

A. A copy of her Malaysian passport, which expired in 1977;

B. Letters of support from five of her cousins, most of which repeat the same factual background as that alleged by the Applicant, and some of which indicate willingness to support the Applicant, financially and otherwise; and

C. A letter from her daughter stating that she (the Applicant's daughter) resides in the United Kingdom and is unable to provide her with care.

III. The Decision

[8] The Officer's reasons for refusal essentially examine establishment, family ties, dependence, and hardship. With respect to establishment, the Officer focused on the length of time that the Applicant has spent in Canada and her integration into the broader community.

A. *Establishment*

[9] With respect to the Applicant's length of time in Canada, the Officer found that the Applicant's submissions did not sufficiently corroborate her assertion that she has been in Canada since 1983. The Officer noted that the Applicant's Malaysian passport had expired in 1977, several years before she allegedly arrived to Canada. The circumstances after the birth of the Applicant's daughter and their arrival to Canada were also unclear.

[10] While the letters of support from her cousins all indicate that the Applicant has been in Canada for several decades, the Officer gave those submissions limited weight. In the Officer's view, the Applicant's cousins were not disinterested third parties and there were inconsistencies as to the year in which the Applicant arrived. On this basis, the Officer found that there was no objective evidence corroborating the date in which the Applicant arrived to Canada.

[11] The Officer also found that, in the alternative, if the Applicant did establish that she has been in Canada since 1983, her alleged time in Canada would have been in contravention of Canada's immigration laws. The Officer therefore concluded that, had the Applicant established her presence in Canada since 1983, her unlawful presence would have weighed negatively against granting the application. This finding appears to be made in the alternative, and the negative weight drawn therefrom did not factor into the Officer's final decision.

[12] On the issue of the Applicant's integration into Canadian society, the Officer noted that the Applicant is, by her own admission, reclusive. She was never employed in Canada, and she spends all of her time with her aunt and family.

B. *Family Ties, Dependence, and Hardship*

[13] Regarding the Applicant's ties to and dependence on her family in Canada, the Officer accepted that the Applicant is dependent on her family in Canada emotionally, financially, and (to a limited degree) physically, and that separation from her family would have an emotional impact. The Officer gave this factor "a high degree of favourable weight".

[14] Despite the Applicant's ties to and dependence on her family in Canada, the Officer concluded that the hardship imposed by separation could be mitigated. The Officer observed that "relationships are not bound by geography", noting that one of the Applicant's cousins lives in the United States, and another lives in a separate province. While there would be a "period of adjustment", the Officer was of the view that the Applicant can "develop new interpersonal ties as she resettles", that she is able to rely on her Canadian family for financial assistance, and that she has her own savings that she could use to assist in her resettlement.

IV. Issue

[15] Was the Officer's decision refusing the application based on H&C grounds unreasonable?

V. Analysis

[16] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

[17] The Applicant argues that the Decision is unreasonable on at least one of the following grounds:

A. The Officer failed to apply the appropriate test;

B. The Officer assessed the evidence unreasonably;

C. The Officer breached the duty of fairness; and/or

D. The Officer acted unfairly, conducting an imbalanced assessment of the case.

[18] The Applicant made no submissions in support of the view that the Officer "acted unfairly, conducting an imbalanced assessment of the case".

[19] I am not persuaded that the Officer failed to apply the appropriate test. The standard on an application under subsection 25(1) of the *IRPA* is whether the facts as established by the evidence would excite in a reasonable person in a civilized community a desire to relieve the misfortunes of the applicant (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paras 13, 21). This involves an examination of all relevant facts and factors (at para 25). This includes, but is not limited to, hardship.

[20] Contrary to the Applicant's argument, the Officer did not restrict their substantive analysis to hardship, nor did they ignore the Applicant's dependence on her family in Canada. As summarized above, the Officer considered establishment, family ties, dependence, and hardship. They also briefly considered whether the Applicant's aunt would be negatively affected by separation from the Applicant and concluded there was no evidence in support of that allegation.

[21] Nor did the Officer compartmentalize the factors before them as the Applicant alleges. The Officer assessed each relevant factor and gave it a weight. The Officer then considered whether, overall, granting the application would be justified. The Officer did not, as the Applicant suggests, examine each factor as its own unique threshold.

[22] I also do not accept the Applicant's submission that the Officer breached their duty of fairness. The Applicant takes issue with the Officer's finding that the evidence of the Applicant regarding the length of time she spent in Canada was insufficient. She argues that this conclusion amounted to a negative credibility finding.

[23] It was open to the Officer to give limited weight to the statements provided by the Applicant's cousins in light of their relationship to the Applicant. Moreover, the Applicant is correct to highlight that any inconsistencies in the cousins' statements can be attributed to the fact that they were children when the Applicant allegedly arrived to Canada. However, I do not read the Officer's reasons as suggesting that the statements lack credibility because of the inconsistencies. The inconsistencies show that the statements cannot corroborate the Applicant's date of arrival to Canada – precisely because the cousins' memory on this issue is not definitive. Notably, the Officer did not discount the cousins' statements entirely, but simply gave the statements limited weight, a choice that is well within their purview.

[24] While I agree with the Respondent's position that the quality of the Applicant's evidence was limited, I do not agree that it would be reasonable to dispose of the H&C application on that basis. In fact, the Officer's conclusion was that the evidence had limited weight and it was nevertheless required to engage with it in a reasonable, coherent, and consistent manner.

[25] I find that the Officer's engagement with the evidence with respect to the Applicant's ability to resettle in Malaysia did not meet this standard and was ultimately unreasonable. On the one hand, the Officer agreed based on the evidence before it that the Applicant depends on her

Canadian family emotionally. The Officer also accepted that the Applicant would suffer an emotional impact if she was separated from her Canadian family. On the other hand, the Officer also concluded that the Applicant "would be able to develop new interpersonal ties" in Malaysia. This finding is inconsistent with the Officer's conclusion that the Applicant is reclusive and that she interacts mainly with members of her Canadian family, and does not reasonably recognize the Applicant's advanced age. The Officer's inference from the evidence on this point was therefore inconsistent and unreasonable.

[26] Moreover, the Officer unreasonably concluded that the Applicant's relationship with her Canadian family can be maintained "by way of telephone, video call or potentially future visitations". The Officer mistook the Applicant's ability to maintain contact with the ability to maintain any sort of relationship of a similar quality with individuals on whom the Applicant depends emotionally. While the Officer is correct to draw as an example the fact that one of the Applicant's cousins lives in the United States, the Officer failed to note that the cousin's presence in the United States was temporary, and that his primary area of residence was the same city in which the Applicant currently resides. Moreover, even if the cousin's move to the United States was permanent, the Officer was unreasonable in drawing a comparison between the Applicant, a reclusive 78-year-old woman, and her cousin, a younger man with a career abroad. The Officer's conclusions are simply not justifiable given the evidence, limited in quality as it may be. Ignoring gender and age, vulnerability, and the availability of emotional support outside of Canada fails to recognize a reasonable, holistic approach to the H&C considerations.

[27] Finally, it was unreasonable of the Officer to conclude that, despite the Applicant's financial dependence on her Canadian family, she would be able to support her resettlement and reintegration into Malaysia. While the Officer noted that the Applicant has financial assets and could rely on financial support from her family, the Officer failed to account for the fact that the Applicant's financial dependence meant that her assets were managed entirely by her Canadian family on her behalf. The view that the Applicant could reliably manage those assets now, at her age, in Malaysia, and with a view to re-settle and re-integrate was simply not reasonable.

[28] Taking into account the applicable test as articulated in *Kanthasamy*, and since (1) the Officer found that the Applicant is emotionally, financially, and (to a limited extent) physically dependent on her Canadian family, (2) the Officer found that this dependence must be given high weight, and (3) it is unreasonable to expect the Applicant – at her disposition, age, and degree of dependence – to settle and re-integrate in Malaysia without emotional and financial harm, I find the Officer's decision results in an imbalanced result and is unreasonable.

VI. Conclusion

[29] The application is allowed. The Officer's decision is quashed and remitted for re-determination by a different officer in accordance with the Court's reasons herein.

[30] There is no question for certification.

JUDGMENT in IMM-9734-22

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the decision is quashed and remitted for re-determination by a different officer.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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